Filed 3/29/02 Opinion following order vacating prior opinion

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ROMAN SHISHALOVSKY et al.,

Defendants and Appellants.

B141511

(Los Angeles County
Super. Ct. No. BA164653)

APPEAL from a judgment of the Superior Court of Los Angeles County. Norm Shapiro, Judge. Affirmed.

Howard J. Specter, under appointment by the Court of Appeal, for Defendant and Appellant Roman Shishalovsky.

Linn Davis, under appointment by the Court of Appeal, for the Defendant and Appellant Stella Shishalovsky.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Kenneth C. Byrne, Supervising Deputy Attorney General, and April S. Rylaarsdam, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

This case arises out of Mr. and Mrs. Shishalovsky ("Appellants"), receipt of welfare benefits from 1992 through 1997. Appellants were charged with welfare fraud in an amount greater than $50,000 (Welf. & Inst. Code § 10980 and Pen. Code[1] § 120226.6) and with 16 counts of perjury (§ 118). Following a bench trial, Appellants were convicted of welfare fraud and seven counts of perjury, all of which were based on Appellants' failure to report self-employment, bank accounts, and stock on the forms they submitted to obtain welfare benefits. Three counts of perjury were dismissed on the motion of the prosecution and the remaining counts were dismissed following a defense motion. The allegation that the amount received was greater than $50,000 was found to be true.

Appellants' sole contention on appeal is that the evidence is insufficient to support the verdict. We find sufficient evidence that Appellants violated Welfare and Institutions Code section 10980, committed perjury, and received benefits in an amount greater than $50,000. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

As required, we view all facts in the light most favorable to the judgment. (*People v. Barnes* (1986) 42 Cal.3d 284, 303.)

In order to receive either Aid To Families With Dependent Children ("AFDC") or food stamps from the Department of Social Services ("DPSS"), a participant is required to complete DPSS forms under penalty of perjury. The CA-2 is the initial form, and it is

---

1 Unless otherwise indicated, all further code references are to the Penal Code.

used to determine eligibility for AFDC and for food stamps.[2] After the initial determination of eligibility, a participant must complete a CA-7 form each month and mail it to DPSS. The CA-7 asks several questions regarding any changes that might affect the participant's eligibility during that month. Once a change has been reported, a participant is not required to report the same change again unless it is income from employment. If it is income received on a regular basis, the participant must report either the income received each month or the hours worked. In addition to the monthly CA-7 form, a participant must complete a CA-20 form annually. Unlike the CA-7, the CA-20 must be completed in person at a DPSS office. A 1728-A form is a supplemental report of income and expenses that may be completed in addition to a CA-7.

Appellants immigrated to the United States from Uzbekistan. In Uzbekistan, Appellants owned a home, an apartment, a restaurant, and two vehicles. Roman[3] left instructions with a business partner to liquidate Appellants' assets and send him the proceeds from the sale.

Appellants first applied for aid in the West Los Angeles office of DPSS in April 1992. As required, when Appellants completed the CA-2 form, they did so in person and signed the form under penalty of perjury. Appellants met with an intake worker employed by DPSS, who explained both the CA-2 and the CA-7 forms. The intake worker explicitly advised Appellants of their continuing responsibility to report any changes in eligibility. Appellants reported on their CA-2 that neither worked or intended to work; that they did not receive money from any source; that they did not own or use personal belongings worth more than $100; and that they did not own real estate either in the United States or elsewhere. Appellants also indicated that neither of them owned any

---

[2] The name of this program has changed since appellants received aid, but the change is not relevant to this case.

[3] Because Appellants have the same last name, we refer to them by their first names.

cash, checking accounts, savings accounts, stocks, bonds certificates of deposit, or money market accounts.

In light of the information provided by Appellants, DPSS determined that Appellants were eligible for aid on May 8, 1992. Appellants initially received $723 in AFDC benefits and $278 in food stamps on a monthly basis, and the amount for food stamps later increased.

After Appellants were approved for welfare benefits, they opened a bank account at Bank of America in the name of Roman and Stella Shishalovsky. In May 1992, Appellants deposited $200 into the bank account. Appellants did not report the bank account on their May CA-7 which asked "Does anyone have anything else to report" "checking/savings, open or closed checking or savings account, or where the balance is different at the end of the month," and which Appellants completed under penalty of perjury.

In June, Appellants made three deposits totaling $2049[4] into their bank account at Bank of America. In July, Appellants deposited $1,473 and in August they deposited $1,274 in the same bank account. In September, Appellants deposited $988 and received a credit adjustment for $1,240. None of these deposits were included on Appellants' monthly CA-7 forms signed under penalty of perjury and sent to DPSS. However, one statement from the Bank of America account dated January 12, 1993, was included in Appellants' file at DPSS. DPSS's records failed to reveal how and when it became aware of the bank account, and that failure was an error on DPSS's behalf.

On November 15, 1993, Roman executed a lease for a restaurant, Uzbekistan Restaurant, under the name Roman Shishalovsky, Uzbek, Inc. Roman also signed a guaranty agreement for the lease and provided $11,400 as a security deposit for the rented space. The lease required monthly rental payments of $2800 and Roman paid the

---

[4] Later in the record the total is referred to as $2,443. The discrepancy is not relevant.

first month's rent in advance. In order to obtain the lease, the landlord required Roman to complete a credit application. On the credit application, Roman indicated that his salary was $2500 and that he was the manager of Pippers Restaurant. The credit application did not indicate the term of Roman's $2500 income, but the landlord understood it to be on a monthly basis.

Applications for Uzbekistan Restaurant were filed with the California State Board of Equalization and with the California Department of Alcohol Beverage Control. According to the forms filed with the Board of Equalization, Uzbekistan Restaurant opened in May 1994 and closed in December 1995. Its gross receipts totaled over $253,000. In connection with the application filed with California Department of Alcoholic Beverage Control, both Roman and Stella filed affidavits in support of that application. Appellants did not report Roman's involvement with Uzbekistan Restaurant on any of the forms they submitted to DPSS.

In February 1994, Appellants were issued stock in the Uzbek Corporation. Minutes from an August 1995 board meeting indicated that the Uzbek Corporation considered purchasing the stock owned by Appellants for $25,000. Appellants did not report their stock in Uzbek Corporation on any of the forms they submitted to DPSS. Nor did they report the possible purchase of the stock by Uzbek Corporation.

On August 26, 1994, Roman and another man, Roman Lukatsky, entered into another lease for commercial property. Although neither actually signed the lease, Mr. Lukatsky made the lease payments. The leased space was used to open Roman's International Market. Fifty-thousand dollars was spent on fixtures and equipment. Roman was responsible for signing checks for the business. Mr. Lukatsky informed the landlord that Roman helped manage the market. Forms submitted with the Board of Equalization indicate Roman's International Market opened June 1, 1996 and closed January 21, 1998. Appellants did not report Roman's involvement with Roman's International Market on any of their DPSS forms.

In addition to the Uzbekistan Restaurant, Roman was the co-owner of another restaurant, the Rasputin's Café. Prior to the opening of the Rasputin's Café, on March

1996, Appellants both applied for an alcohol license for that establishment. The application indicated that Roman would work at Rasputin's Café. The application also indicated that Appellants had $6000 in their Bank of America bank account. The restaurant opened on June 1, 1996 and remained open through January 21, 1998. The Rasputin's Café grossed over $264,000. Roman's involvement with the Rasputin's Café was not reported on any DPSS form.

On December 2, 1996, Roman along with Semen Fogel and Yefim Gorelik, signed a lease for space which was used for the Signature Grill, also known as Worlds Famous House of Grill and Caesar's Grill. Roman obtained power of attorney for Messrs. Fogel and Gorelik. Roman purchased an alcohol license for the Signature Grill for $1000. For a period of the Signature Grill's operation, Roman's signature was placed on the payroll checks. In 1997, Roman invested $54,000 in the Signature Grill. Roman also signed the fictitious business statement as the registrant of the corporation. The application for an alcohol license indicated that Roman would work at the Signature Grill and that Appellants had a bank account at Bank of America with $2000.

In January 1997, on their monthly CA-7 form, Roman stated his friends "offered to me to open a restaurant in June." Roman also informed DPSS by telephone that he was working for a friend trying to set up a restaurant but was not being paid. On March 10, 1997, Appellants filed a supplemental report of income and expenses. Roman stated "I am helping with the construction of the restaurant, and the construction will last about four months. When construction is over and the restaurant will open, I will start working there. I am not getting paid for helping." No further mention of Roman's involvement in the Signature Grill was included in any of Appellants' DPSS forms.

In addition to Roman's involvement with the Signature Grill in the early part of 1997, Roman also was issued a stock certificate for 4000 shares of common stock in Advance Business Systems, Inc. This stock ownership was not included on any DPSS form.

On their CA-7 form filed in May 1997, Appellants indicated that they had additional information to report by checking the "yes" box. Appellants indicated that they opened a checking account by underlying the words open and checking. Appellants did not give further details regarding their checking account. Appellants also underlined the words job and change of hours of pay and they reported that they received $10,000 from Russia. Appellants did not indicate that they had a savings account.

On May 7, 1997, Appellants opened a money market account at Wells Fargo Bank. In May 1997, Appellants deposited a total of $15,000 into that account. Appellants' did not report the $15,000 deposit on the May CA-7 form. Ten thousand dollars was deposited into another Wells Fargo account in May. Appellants did not report the $10,000 deposit but indicated that they opened a checking account by underlining those words on the form.

Based on information that Appellants received $10,000, reported on their May CA-7 form, Appellants' benefits were terminated in July 1997. The two-month delay was standard as the information reported in May was received by DPSS in June and took effect in July. Until their benefits were terminated, Appellants received a total of $62,175 in AFDC benefits and food stamps.

In June, after Appellants disclosed that they received money from Russia, Roman applied to lease a Mercedes Benz. Appellants also purchased another motor vehicle, an Infinity, that month. Roman's application for the lease of the Mercedes states that he was employed by the Signature Grill and the Rasputin's Café. According to the information provided, Roman's salary from the Signature Grill was $75,000. The application did not indicate the time period for the receipt of the $75,000. It indicated that Roman held the position for five months. Roman stated that he had been the general manager of the Rasputin's Café for three years and two months. He also stated that he had been the general manager of the Signature Grill for five months. On forms completed in connection with the Infinity, Roman indicated that he had worked at the Signature Grill for one year, at the Rasputin's Café for one year, and at Roman's International Market for two years and eight month. He further provided that his monthly income from the Signature Grill was $7,000.

Appellants were charged with receiving aid in an amount over $400 based on a misrepresentation in violation of Welfare and Institutions Code section 10980(c)(2). An enhancement that Appellants took property of over $50,000 under section 12022.6, subdivision (a)(1) also was alleged. Counts 2-16 alleged perjury by false application for aid in violation of section 118. Count 2 alleged the failure to report self-employment on the February 24, 1994 application for food stamps. Count 3 alleged the failure to report stocks on the February 24, 1994 CA-20. Count 4 alleged the failure to report self-employment on the March 25, 1995 application for food stamps. Count 5 alleged the false report that no one uses or has used any motor vehicles on the March 25, 1995 CA 20. Count 6 alleged that failure to report self-employment on the April 2, 1995 CA-7. Count 7 alleged the failure to report self-employment on the January 3, 1996 CA-7. Count 8 alleged the failure to report self-employment and to report the sale of stock certificates on the March 8, 1996 application for food stamps. Count 9 alleged the failure to report self-employment on the September 1, 1996 CA-7. Count 10 alleged the failure to report self-employment on the November 1, 1996 CA-7. Count 11 alleged the failure to report self-employment on the February 3, 1997 CA-7. Count 12 alleged the failure to report self-employment on the March 1, 1997 CA-7; Count 13 alleged the failure to report self-employment and that no one had stock certificates on the March 3, 1997 application for food stamps; Counts 14 and 15 alleged the failure to report self-employment on the April 2, 1997 CA-7 and the May 3, 1997 CA-7. Count 16 alleged the failure to report self-employment and bank accounts on the June 3, 1997 CA-7.

At trial, Robert Arguello, a welfare fraud investigator for the Los Angeles District Attorney's Office, testified regarding the basis for his investigation of Appellants. He testified that he arrested Roman's sister-in-law and her husband, Anatoly Rekechenetsky. He testified that Mr. Rekechenetsky informed him that "99.9 percent of all Russians . . . [i]n Los Angeles, have businesses, own businesses, own automobiles, and are on welfare. . . ." This statement was not admitted for the truth of the matter asserted, but only for the reasons underlying the District Attorney's investigation of Appellants. Mr.

Arguello also testified that when the Rekechentskys were arrested, Roman came to pick up the children and stated that he was "a businessman who owned various businesses."[5]

Cheryle Henkle, a supervising investigator at the Los Angeles County Welfare Fraud Prevention Department, was assigned to Appellants' case. She testified that eligibility for AFDC is determined based on participants' income and assets. Ms. Henke testified that a participant is required to report all income and assets regardless of concomitant costs because otherwise DPSS is unable to properly determine eligibility. Prior to April 1994, eligibility was denied where participants accumulated assets worth more than $1000. After April 1994, a participant was permitted to accumulate $2000 in assets. The $1000 and $2000 maximum, according to Ms. Henke, included all funds that the participants have access to during the month including AFDC payments. In addition, Ms. Henke explained that benefits were automatically denied if a participant were employed more than 100 hours a month even if the participant was not paid for his or her employment. Ms. Henke also testified that signing a lease for commercial property was considered an indicia of self-employment.

Ms. Henke opined as to Appellants' eligibility for benefits. She concluded that there were several periods of time over which Appellants received benefits even though they were ineligible for those benefits. She testified that beginning in June 1992, Appellants improperly failed to disclose their Bank of America account. Ms. Henkle testified that the information was relevant to whether Appellants were receiving money from another source and whether they had a bank account. Ms. Henkle also testified that Appellants would have been ineligible for aid from May 1992 through September 1992

---

[5] That evidence was admitted only with respect to Roman. Other evidence was also limited to Roman. However, no issue is raised on appeal that the evidence is insufficient to support the verdict with respect to Stella because evidence against Roman was improperly admitted against her. Therefore, we do not indicate each time the evidence was so limited.

because each month, the money in the bank, either alone or in addition to the AFDC payments, exceeded the $1000 limit.

Ms. Henke also determined that from August 26, 1994 through October 31, 1995, Appellants were ineligible for aid due to Roman's employment at Roman's International Market. According to Ms. Henkle, Roman's access to a bank account for Roman's International Market rendered Appellants ineligible for aid between March 1995 and December 1995. Thus, the total period of ineligibility as a result of Roman's employment at Roman's International Market was from August 26, 1994 through December 1995.

Ms. Henke further opined that from November 22, 1996 through July 31, 1997, Appellants were not eligible for aid because of Roman's involvement with the Signature Grill.

Ms. Henkle also testified regarding several periods of time where Roman's self-employment may have affected Appellants' eligibility for benefits. According to Ms. Henke, beginning on November 15, 1993, when Roman leased the property for the Uzbekistan Restaurant, Appellants improperly failed to report that he was self-employed. Ms. Henkle determined that based on the $2800 monthly lease payment Appellants may have been ineligible for aid from November 1993 to December 14,1995, but based on the lease payments it appeared that Appellants were ineligible throughout this period. Roman's work at the Rasputin's Café may also have rendered him ineligible for aid. Ms. Henke was unable to determine appellant's eligibility during this time period with certainty, however, because Roman's access to the money made by the Rasputin's Café was not clear.

With respect to the Uzbek stock, Ms. Henkle could not determine whether Appellants' ownership of it would have rendered them ineligible because the value of the stock was not known. If the value was $25,000 as reported in the minutes of the Board meeting, Appellants would have been ineligible.

At trial, evidence was presented suggesting that Appellants had difficulty with the English language. Although Appellants indicated that their primary language was

English and that they wanted documents sent to them in English, Appellants' daughter testified that she translated certain forms for her parents and called DPSS on her parents' behalf. Each case worker, who had contact with Appellants, testified that he or she believed Appellants understood English.

Mr. Gorelik's wife testified that Roman was never an employee of the Signature Grill and never received any money from it but that he was a shareholder of the company that owned the business. There was also evidence that Roman previously stated he was to be paid only if the restaurants were profitable. No money from any of the restaurants was traced to Roman.

After the prosecution's case-in-chief, the prosecutor moved to strike counts 3, 4, and 8, and the trial court granted that request. The prosecutor also attempted to add five counts of perjury, but later agreed that the proposed amendments were not timely. Counts 2, 5, 6, 7, and 10 were dismissed when the trial court granted Appellants' motion pursuant to section 1118. Appellants were convicted on counts 1, 9, 11, 12, 13, 14, 15, and 16. The court found Stella to be a principal in all counts in that she aided and abetted Roman's failure to report.

Stella was sentenced to five years formal probation and ordered jointly and severally liable for direct restitution to the victim in the amount of $62, 175. Roman was sentenced to two years and four months – one year and four months for the substantive charge on Count 1 and one year for the enhancement pursuant to section 12022.6, subdivision (a)(1). He was found jointly and severally liable for the restitution amount of $62,175 and was ordered to pay a restitution fine of $200 pursuant to section 1202.4, subdivision (b).

Appellants filed a timely notice of appeal.

DISCUSSION

The standard of review when an appeal from a criminal conviction is based on a claim of insufficient evidence is, whether after viewing all of the evidence in the light most favorable to the prosecution, "'*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citation.]" (*People v.*

Johnson (1980) 26 Cal.3d 557, 576-578.) When two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trier of fact. (*People v. Perez* (1992) 2 Cal.4th 1117, 1126.) The inquiry on appeal is whether substantial evidence supports the conclusion of the trier of fact. (*People v. Crittenden* (1994) 9 Cal.4th 83, 139; *People v. Mincey* (1992) 2 Cal.4th 408, 432.)

I. Violation Of Welfare And Institutions Code Section 10980

First, Appellants[6] argue that the record lacks substantial evidence to support their conviction of violation of Welfare and Institutions Code section 10980. Appellants argue that the prosecution has failed to demonstrate they would have been ineligible for welfare benefits had their applications been truthful, and they correctly point out that a showing of ineligibility is an element of the crime. (*People v. Ochoa* (1991) 231 Cal.App.3d 1413, 1420 [holding that ineligibility is an element of welfare fraud].) Appellants also claim the record lacks evidence of a specific intent to defraud. (*See People v. Camillo* (1988) 198 Cal.App.3d 981, 989 fn. 3 [holding that section 10980 would be constitutionally infirm without a scienter requirement], discussed in another context in *People v. Preston* (1996) 43 Cal.App.4th 450, 459.) In addition to the ineligibility requirement, the remaining elements of welfare fraud are (1) a false statement or representation, impersonation or other fraudulent device and (2) which statement, representation, impersonation or other device results in the obtaining or retention of aid. (*People v. Ochoa, supra,* 231 Cal.App.3d at 1420.)

We find ample evidence to support the finding that Appellants received aid for which they were ineligible in an amount greater than $400. Roman entered a lease for Roman's International market on August 26, 1994 and helped manage the market, which remained in Roman and Mr. Lukasky's name through November 1, 1995. Roman did not

---

[6] Each Appellant requests to join the arguments of the other.

report his involvement with the market on any of his forms submitted to DPSS. Roman received aid throughout this period, and the aid received each month was more than $400. Ms. Henke testified that because of Roman's employment at Roman's International Market, Appellants were ineligible for aid during March 1995 through November 1995. This evidence alone constitutes substantial evidence in support of the verdict.

There is additional evidence. On December 2, 1996, Roman, with two of his friends, signed a lease for space for the Signature Grill, a restaurant. Roman purchased an alcohol license for the Signature Grill and signed payroll checks. He also invested $54,000 in that enterprise and was a shareholder in the company that owned the restaurant. Roman did not report that he worked at the Signature Grill on any of the forms filed with DPSS. Roman did indicate that his friends "offered to me to open a restaurant in June," but never stated that he was employed or that he had funds to invest in the restaurant. Ms. Henke testified that based on his work at the Signature Grill, Roman was ineligible for aid from November 22, 1996 through July 31, 1997, and Appellants received more than $400 in aid each of those months. This evidence is sufficient to support the conviction independent of the evidence regarding Roman's International Market.

Appellants' claim that there is no evidence of specific intent to defraud lacks merit. The record makes clear that Appellants understood the information necessary to provide or to withhold in order to obtain what they sought in various situations. For example, although Appellants never revealed Roman's employment to DPSS, they reiterated both his employment and salary on numerous other applications. In an application to lease Uzbekistan Restaurant, Roman indicated that his income was $2500. In an application to lease a vehicle, Roman indicated that his salary from the Signature Grill was $75,000 and in an application for another vehicle he stated that his monthly income from his employment at the Signature Grill was $7000. Roman further stated that he was the general manager of the Signature Grill. Appellants' concealment of Roman's employment on the DPSS forms reveals a calculated attempt to defraud DPSS and is sufficient to show the requisite specific intent.

That English was not Appellants' first language does not demonstrate that they lacked the intent to commit welfare fraud. Appellants were informed of their duty and responsibilities to DPSS. Each DPSS employee who interacted with Appellants testified that Appellants understood the DPSS requirements of reporting any changes in eligibility. The trial court could have credited the testimony of the intake workers, each of which, determined that Appellants understood English.

Appellants argue that Roman's involvement at Roman's International Market and at the Signature Grill should not be considered employment because those enterprises never were successful and because funds were not traced to Appellants. This argument is essentially a request that we reweigh the evidence. The court found, based in part on Roman's own admissions, that Roman was employed and failed to report this information. In addition, Ms. Henke testified that where a person receiving AFDC benefits does not report self-employment no deductions for costs are permitted. Ms. Henke additionally testified that the execution of a lease is an indicia of employment. Although the fact that Roman stated he was employed on other applications does not compel the conclusion that he was employed, it is evidence in support of that conclusion. Moreover, the existence of exculpatory evidence, such as the fact that funds were not traced to Roman, does not justify a rejection of the findings of the trier of fact unless there is no basis for a finding of substantial evidence. (*People v. Redrick* (1961) 55 Cal.2d 282, 290.) Applying the appropriate standard of review, we find substantial evidence to support the conviction for violation of Welfare and Institutions Code section 10980.

The parties dispute whether Appellants' failure to report a Bank of America account can be raised in light of the four-year statute of limitations under sections 801.5 and 803. The statue does not begin to run until discovery of the offense. (§ 803, subd. (c).) As respondent points out their testimony was, which the trier of fact could have found credible, that Appellants' fraud was not discovered until 1997 when Roman's relative informed the District Attorney's investigator that "99.9 percent of all Russians . . . [i]n Los Angeles, have businesses, own businesses, own automobiles, and are on welfare. . . ." In addition, welfare fraud is a continuing offense which "prevents the defendant from invoking the bar of the statute of limitations as long as the *completion* of the course of conduct lies within the statutory period." (*People v. Keehley* (1987) 193 Cal.App.3d 1381, 1386 [interpreting the former section 11483].) Here, the conduct occurred through 1997, and the prosecution, commenced in 1998 was timely. Appellants' failure to report their bank account was a third independent basis for finding substantial evidence in support of the conviction for welfare fraud.

Our conclusion that the record contains substantial evidence is supported by Appellants' own argument with respect to the enhancement. Both Appellants acknowledge that they received $62,125 but argue that they were eligible for part of the aid. Stella argues that they were eligible for $21,000 in benefits. Roman argues that Appellants were eligible for $45,000 in benefits. In either case, as their own arguments reveal, Appellants received several thousands of dollars of aid for which they were ineligible, well over the $400 minimum.

II. Perjury Counts

Appellants argue that the record lacks evidence of the specific intent necessary for perjury and that the evidence is insufficient to support Counts 11, 12, 14, 15, and 16. Appellants claim of insufficient evidence is based on (1) the fact that the failure to report Roman's self-employment is contained in more than one count; (2) their claim that the failure to report was not material because the state failed to show each resulted in their ineligibility for benefits; and (3) their claim that Roman actually reported his self employment.

First, for the same reasons discussed above, we find that Appellants had the requisite specific intent. It appears, from the record, that Appellants understood what information was necessary to place on different applications. When they sought to obtain welfare benefits they chose to conceal employment and assets. When they sought to lease real property and motor vehicles, they prominently revealed their employment and assets. Appellants' conduct appears to be a deliberate decision to omit certain information from their welfare applications. This is sufficient evidence to infer that Appellants had the scienter necessary to commit perjury.

It is true, as Appellants argue, that multiple counts were based on the same failure to report. Counts 11, 12, 13, 14, 15, and 16 all relate to Roman's failure to report his employment at the Signature Grill, though some also relate to other omissions. Appellants also correctly point out that Ms. Henke testified that once a change in eligibility is reported on a CA-7 form, the participant's obligation to report is expunged. In other words, the participant is not required to report the same change on each CA-7 form. However, Appellants fail to mention that Ms. Henke testified that this rule did not apply where the change concerned income from employment. In the case of employment, the participants are required to report their income or hours every month.

In any event, Ms. Henke's testimony does not support Appellants' argument because her testimony concerned only the circumstance where a participant adequately reported information, not the circumstance in the present case where a participant concealed information. Ms. Henke did not testify that the concealment of information one month expunges the participant's obligation to report the same information the next month, and that conclusion makes no sense in light of the welfare scheme. Without any information, DPSS is not able to properly determine eligibility and the continued failure to provide information does not, in any manner, correct the situation.

Appellants cite no other support for their claim that multiple perjury counts cannot be based on the failure to report the same employment. Each month Appellants signed a separate DPSS form under penalty of perjury, and because of information on that form Appellants continued to receive benefits. Each separate form was a proper basis for a perjury count even though the information hidden by Appellants was the same. (*People v. Keehley, supra,* 193 Cal.App.3d 1381, 1384 ["With respect to perjury, the offense is the false swearing; each successive false swearing constitutes a separate and distinct offense."].)

Next Appellants argue that the perjury counts cannot be sustained because the false statements were not material. Appellants argue that the failure to report self-employment would not have affected their eligibility and therefore is not material. It is well established that materiality is an element of perjury. (*People v. Korbin* (1995) 11 Cal.4th 416, 418.) The test for materiality is "whether the statement or testimony 'might have been used to affect [the proceeding in or for which it was made].' [Citations.]" (*Id.* at p. 420.)

Appellants' argument is, again, essentially a request that we ignore Ms. Henke's testimony that Roman's employment at the Signature Grill rendered him ineligible for aid and find instead that Roman incurred only costs, not revenue in connection with his involvement with the Signature Grill. However, applying the appropriate standard of review, we must sustain the verdict if it is supported by substantial evidence even if other inferences may be available. (*People v. Towler* (1982) 31 Cal.3d 105, 117.) Here there is strong evidence, that Roman's involvement with the Signature Grill was significant to the determination of his eligibility and therefore might have been used to affect the determination of benefits. Consequently, it was material.

Appellants' argument that the statement "Yefim Gorelik and Alexander Pokrychtchenko offered to me to open a restaurant in June" was sufficient to dismiss his responsibility for any continued reporting of his employment at the Signature Grill, ignores the fact that Appellants never stated Roman was self-employed (and even do not concede that point in this appeal). Appellants understood how to report employment when that was their goal; the application for a motor vehicle indicates that Roman was the general manager of the Rasputin's Café and was employed at the Signature Grill. The statement that friends offered to open a restaurant in June is far different from a statement that he was the general manager. There is support for the trial court's conclusion that Appellants failed to report Roman's self-employment.

In short, we find substantial evidence to support each of Appellants' convictions for perjury.

III. Section 12022.6, Subdivision (a)(1) Enhancement

Appellants do not dispute that they received $62,175 in benefits for AFDC and food stamps but argue that application of the enhancement under section 12022.6(a)(1)[7] was improper because the government failed to prove that they were ineligible the entire time they received benefits and if correctly calculated the amount improperly received by Appellants totals only approximately $41,000, which is far short of the $50,000 requirement for imposition of the enhancement. Roman argues that they received only approximately $17,000 in benefits for which they were ineligible.

Appellants concede that *People v. Crow* (1993) 6 Cal.4th 952 governs this case. In *Crow*, our Supreme Court held that "the government's loss for purposes of the enhancement is the amount actually paid less the amount the defendant would have been eligible to receive absent the fraud." (*Id.* at 955.) The high Court further held that the defendant "bears the burden of proving that he or she would have been entitled to welfare benefits if the application for aid had been truthful instead of fraudulent." (*Ibid.*)

Crow involved a defendant who executed numerous declarations stating that he did not reside with the mother of his children, Acosta. (*People v. Crow, supra,* 6 Cal.4th at p. 955.) The declarations were false, and, as a result, Acosta received benefits exceeding the minimum to apply the enhancement at that time. (*Ibid.*) The appellant argued that Acosta would have been entitled to receive benefits during the period of time his only income was unemployment insurance. (*Id.* at 962.) A witness for the prosecution testified that the county's knowledge of the appellant's employment was

---

[7] That section provides: "When any person takes, damages, or destroys any property in the commission or attempted commission of a felony, with the intent to cause that taking, damage, or destruction, the court shall impose an additional term as follows: (1) If the loss exceeds fifty thousand dollars ($50,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of one year."

limited and if his "income were sufficiently high, Acosta would not have been entitled to any benefits." (*Ibid*.)

The court held that proving the amount of money paid to Acosta was sufficient to meet the prosecution's burden. (*People v. Crow*, *supra*, 6 Cal.4th at pp. 962-963.) "If, because defendant was intermittently unemployed, some of that money would have been paid to Acosta regardless of the false declarations, and as a result the amount of the county's loss did not exceed $25,000, it was defendant's burden to show this." (*Id.* at 963.)

This case is just like *Crow.* If the value of the property owned in Uzbekistan was sufficiently high, Appellants would not have been entitled to any benefits. The prosecution showed, and Appellants do not dispute, that the county paid $62,125 in benefits. If Appellants were entitled to benefits regardless of their ownership of this property, it was their burden to present such evidence and Appellants failed to carry that burden.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

COOPER, P.J.

We concur:

RUBIN, J.

BOLAND, J.